IN THE

SUPREME COURT OF THE UNITED STATES.

October Term, A. D. 1901.

No. 497.

COUNTY OF ST. CLAIR,
Plaintiff in Error.

vs.

INTERSTATE SAND AND CAR TRANSFER COMPANY,
Defendant in Error.

STATEMENT.

This is an action of debt brought by the Plaintiff in Error, which is a County of the State of Illinois, against the Defendant in Error, which is a corporation of the State of Missouri. The suit was commenced in the Circuit Court of St.Clair County, and removed on the petition of the Defendant in Error to the Circuit Court of the United States for the Southern District of Illinois.

The Declaration contains two counts. The first count alleges that Defendant in Error, on the 24th day of October, 1896, established a certain ferry for the conveyance of property for profit and hire across the Mississippi river and within the limits

of the said County of St. Clair, and having so established the same, has continued to keep and use the same from thence hitherto, without any license from the County Board of said County so to do, contrary to the statute in such cases made and provided. That defendant, in order to so keep and use its said ferry, at the time the same was established, constructed and caused to be built a permanent landing place with certain cradles, and roadways thitherto, within the limits of said county, and has from thence hitherto maintained the same, by means whereof, as well as by means of certain steamboats and barges from thence hitherto used for that purpose, the defendant was enabled to, and did, at various times continuously, since the day last aforesaid, ferry for profit and hire property, to-wit: certain railroad cars from said county across the Mississippi river aforesaid, and from the west bank of said river to said County, to the number of eighty thousand, without any license from said County Board so to do, whereby, and by virtue of the Statute, penalties have accrued to said County in the sum of three dollars for each one said cars so ferried, being in all a large sum of money, to-wit: the sum of two hundred and fifty thousand dollars. (Record p. 3.)

The second count is like the first, except that it alleges that the said permanent landing place and cradles and roadways thereto, were within the limits of said County and subject to taxation in said County and in the State of Illinois. (Record, p. 4.)

After the case reached the Circuit Court of the United States the Defendant in Error filed a General Demurrer to this Declaration. (Record, p. 9.)

On the 6th day of May, 1901, this Demurrer was sustained, and the Plaintiff in Error elected to stand by its Declaration and

thereupon judgment for costs was entered against it. The Writ of Error brings up this judgment for review.

The Errors assigned are as follows:

First—The Circuit Court erred in sustaining the demurrer to the declaration.

Second—The Circuit Court erred in rendering judgment for costs against the plaintiff below.

These two assignments of error are relied upon in this Court and they raise only a single question of law, to-wit:

Is the Statute of Illinois regulating ferries and requiring ferry keepers to take out licenses, such an unwarranted interference with inter-state commerce as to be inapplicable to any ferry from Illinois to Missouri across the Mississippi River when the same is established and operated by a corporation of Missouri?

That Statute is given in full as an appendix hereto. It provides that no person shall establish,keep or use any ferry for the conveyance or passage of persons or property, unless he shall be licensed as directed by the act under penalty of $5 a day and $3 for each person or article of property conveyed, to be forfeited to the County in which the ferry is situated. It further provides how licenses may be procured from the County and what fees shall be paid, and contains various regulating provisions usual in such laws in all the States of the Union which have any statutes upon the subject.

BRIEF.

The authority to establish and regulate ferries between States is not included in the power of the Federal Government to "regulate commerce with foreign nations and among the several States and with Indian tribes." That authority was reserved to the States respectively and never delegated to the United States.

Conway et al v. Taylor's Exrs., 1 Black, 603.

Wiggins Ferry Co. v. East St. Louis, 107 U. S. 365.

Tugwell v. Eagle Pass Ferry Co., 74 Tex. 480.

Carroll v. Campbell, 108 Mo 550-110 Mo. 557.

Marshall v. Grimes, 41 Miss. 27.

People v. Babcock, 11 Wend. 586.

Farming v. Gregoire, 16 How. 524.

See also

Mills v. St. Clair County, 3 Gil. (Ill.) 197; affirmed by this Court in 8 How. 569.

Columbia & Bridge Co. vs. Geisee, 38 N. J. Law 39.

Memphis v. Overton, 3 Yerger, 390.

Chilvers v. People, 11 Mich. 43.

Bowman v. Walthen, 2 McLean (U. S.) 377.

A ferry is in respect of the landing place and not of the water. The water may be to one and the ferry to another.

13 Viner's Ab. 208 A. Cited in *Conway v. Taylor's Ex.*, 1 Black, at page 629.

ARGUMENT.

May it Please the Court:

Unless the cases cited in the brief have been overruled by this Court they seem to be entirely conclusive of this controversy. In the Conway case an Ohio corporation established a ferry between the Ohio and Kentucky shores at Cincinnati. The laws of Kentucky require the operator of any ferry which transported persons or property from Kentucky, to have a license so to do. No such license was procured. The owners of the ferry established in Kentucky sought to enjoin the Ohio corporation from operating its ferry. The injunction was granted, as far as ferrying from the Kentucky shore was concerned, and the very question raised in this case was decided by this Court, towit: whether the States had ever parted with the power to license and regulate inter-state ferries. The Court, in its opinion, uses the following language:

> "The language of the Constitution to which this objection refers is as follows: 'The Congress shall have power to regulate commerce with foreign nations and among the several States and with Indian tribes." (Art. 1, Sec 8, Clause 4.)
>
> "The character and extent of the power thus conferred, and the boundaries which separate that power from the powers of the States touching the same subject, came under discussion in this Court, for the first time in *Gibbons v. Ogden*, (9 Wheat. 1.) It was argued on both sides with exhaustive learning and ability. The judgment of the Court was delivered by Chief Justice Marshall. The Court said, 'They, (State Inspection laws) 'form a portion of the immense mass of legislation which embraces everything within the territory of a State *not surrendered to the General Government*, all which can be most advantageously exercised by the States themselves. Inspection laws, quarantine laws, health laws of every description, as well as laws regulating the internal

commerce of a State, and those which respect turnpike roads, *ferries*, &c., are parts of this mass.'

The proposition thus laid down has not since been questioned in any adjudicated case.

The same principle has been repeatedly affirmed in other cases both in this and State courts.

In *Fanning v. Gregoire*, (9 How 534), before referred to, this Court held:

'The argument that the free navigation of the Mississippi, guaranteed by the ordinance of 1787, or any right which may be supposed to arise from the exercise of the commercial power of Congress, does not apply in this case. Neither of these interfere with *the police powers of a State*, in granting ferry licenses. When navigable rivers within the commercial powers of the Union, may be obstructed, one or both of these powers may be invoked.' * * * *

Undoubtedly the States, in conferring ferry-rights, may pass laws so infringing the commercial power of the nation that it would be the duty of this Court to annul or control them. 13 How. 519, Wheeling Bridge case. The function is one of extreme delicacy, and only to be performed where the infraction is clear. The ferry laws in question in this case is not of that character. We find nothing in them transcending the legitimate exercise of the legislative power of the State.

The authorities referred to must be considered as putting the question at rest. * * * * *

There has been now nearly three-quarters of a century of practical interpretation of the Constitution. During all that time, as before the Constitution had its birth, the States have exercised the power to establish and regulate ferries: Congress never. We have sought in vain for any act of Congress which involves the exercise of this power.

That the authority lies within the scope of that 'immense mass' of undelegated powers which 'are reserved to the States respectively' we think too clear to admit of doubt. *We place judgment wholly upon that ground.*"

This case was decided in December, 1861. In October, 1882,

the case of the *Wiggins Ferry Company v. East St. Louis* was considered by this Court, and while there were two grounds for the decision in that case one of them was that announced in the Fanning and Conway cases. The Court says (107 U. S., at page 374):

> "The exaction of a license fee is an ordinary exercise of the police power by a municipal corporation. When, therefore a State expressly grants to an incorporated city, as in this case, the power to license, tax and regulate ferries, the latter may impose a license tax on the keepers of ferries, although their boats ply between landings lying in two different states, and the act by which this exaction is authorized will not be held to be a regulation of commerce."

The Court then refers to the cases of *Fanning v. Gregoire*, and *Conway v. Taylor's Exrs.*, as sustaining the broad doctrine announced in every case in this Court where the power of a State to license inter-state ferries was drawn in question.

No other cases in this Court than those here mentioned will be found, which present the question raised on this demurrer. Other cases raise other questions and, in the decision of those questions, language may have been used which seems to apply here, but the most cursory examination and comparison will show that nothing that has been said by this Court in any case concerning the power of Congress to regulate inter-state commerce, has any controlling force over the question of the right of a State to *license and regulate* ferries. That right is firmly established and has not been questioned in any adjudicated case where the matter was presented for consideration on the facts, as far as the present writer is informed.

The opinion of the learned Judge who tried this case in the Circuit Court is appended hereto. It will be seen that the Court below was not influenced by the cases above cited and did not in any manner notice or reply to the contention here made.

The opinion proceeds upon the supposition that in the Wiggins Ferry case there was only one ground for the decision to rest upon, to-wit, the fact that the Wiggins Ferry Company was a corporation of Illinois and therefore liable to the license tax imposed. This mistake permeates the whole opinion, and therefore no attention was paid to the broader proposition there and elsewhere announced, that the power to license ferries is one of the police powers of the State which has never been delegated to Congress or exercised by the General Government.

We are discussing here the question whether the right to license ferries was reserved to the states, and whether the reasonable exercise of that right is a regulation of commerce. It is therefore a work of supererogation to examine and distinguish cases which do not involve that question. No case which can be cited by counsel for defendant in error, no matter what general principles it announces or what language it uses with reference to the facts there under consideration, raises or decides that question. The only case involving a ferry is the case of *Gloucester Ferry Co. v. Pennsylvania*, 114 U. S. 196. The facts of that case did not raise the question whether a State might, in the exercise of its police power, license ferries within its borders. It must be borne in mind that a ferry is of the landing place and not of the water, and the ferry may be in one and the water in another, and that consequently every ferry which has a landing place in any State is a ferry of that State, as far as its regulation by means of the police power of that State is concerned. In the Gloucester Ferry case there was no question of license or regulation. The issue was whether the State of Pennsyvania might tax the whole capital stock of the Ferry Company because it had a landing in that State. Its capital stock was personal prop-

erty and was only taxable at the *situs* of the Company, and it was possibly not necessary to raise or discuss the question whether or not such taxation was an interference with interstate commerce. It was a question of taxation that was discussed there and not a question of license or regulation. The police power of the State of Pennsylvania was not under consideration, it was its taxing power that was denied. A license fee is not a tax

A license when applied to a ferry is a privilege or leave to have and use a landing place for landing purposes and relates to the business and not to the property. No matter how much property a ferryman might have he would not require a license, unless he used it for ferry purposes. This Court in the Gloucester Ferry case, did not have before it, upon the facts, any such a question as is presented by this record. There is much said in that case of a general nature that seems to support the contention of defendant in error, but the decisions of courts must be interpreted in the light of the facts of the cases decided. The Court there simply held that the State of Pennsylvania has no power to tax the whole capital stock of a ferry company which had its *situs* in Delaware. There was no question of the exercise of any reserved police power to license or regulate ferries.

Nor did the case of the *Corington, etc., Bridge Co. v. Kentucky*, 154 U. S. 304, involve the question raised here. While it is true, as said by this Court in that case, that there is no distinction between a ferry and a bridge as instruments of interstate commerce, there is a distinction between them in the element which subjects them to certain State regulation. A bridge is not of the landing place, but is a fixed highway. Its approach may not be in one and its main structure in another in the sense that a ferry may be in one and the water in another. The water

of a navigable river is in the public, while a bridge is not. The reasons for the licensing of a ferry do not apply to bridges and bridges have never been licensed by the States.

The question in the Covington Bridge case was whether the State of Kentucky had a right to fix the tolls of an interstate bridge, a part of which was in another State, where Kentucky had no jurisdiction. The Supreme Court instead of overruling the Conway case, distinguish it from the case before it and say concerning it:

> "The opinion, however, did not pass upon the right of one state to regulate the charge for ferriage, nor does it follow that because a State may authorize a ferry or bridge from its own territory to that of another State, it may regulate the charges upon such bridge or ferry."

Inasmuch as no question of regulating charges is in the case at bar, the Covington Bridge case has no application as is clearly shown by that part of the opinion of the Court above quoted.

The decision of this Court in the Conway case has become a part of the law of the land.

The Supreme Court of Mississippi in 1866, in the case of *Marshall v. Grimes*, 41 Miss. 27, held that the power to establish and regulate ferries over interstate streams belongs to the states and is not included in that grant of power to the Federal Government "to regulate commerce with foreign nations and among the several states and with Indian tribes," and its conclusion was based mainly upon the ruling of this Court in the Conway case.

The Supreme Court of New Jersey in 1875, in the case of *Columbia &c. Bridge Co. v. Geisse*, 38 N. J. Law, 39, held that the State of New Jersey had power to grant a franchise to operate a ferry over the Delaware River to the State of Pennsylvania, and cites the Conway case in its opinion.

In the case of *Tugwell v. Eagle Pass Ferry Co.*, 74 Tex. 480; decided in 1889, the Supreme Court of Texas, following the case of *Conway v. Taylor*, 1 Black 603, and other authorities which were thought to support that position, held that the State of Texas, through its municipal agencies, as in the case at bar, had power to license ferries plying between that State and Mexico, and that the exercise of that power was not a prohibited interference with foreign commerce. The opinion of the Court reviews the authorities and, in considering a petition for a rehearing, uses the following language:

> "It is further insisted that the Court misconceived the scope and effect of the decision in the case of *The Ferry Co. v. Pennsylvania*, 114, U. S. 196. It is claimed that, properly considered, it overrules the case of *Conway v. Taylor*, 1 Black 603, cited by us in support of the conclusion that the State has the power to grant a license to operate a ferry across a stream which constitutes its boundary. Having again carefully examined the opinions in the two cases we find no ground for this assumption. In *The Ferry Co. v. Pennsylvania*, *supra*, Mr. Justice Field, who delivered the opinion of the Court, in speaking of ferrries "over water separating" the States, concedes "that the privilege of keeping a ferry with the right to take toll for passengers and freight, is a a franchise grantable by the State, to be exercised within such limits and under such regulations as may be required for the safety, comfort, and convenience of the public." 114 U. S. 217. If the establishment of a ferry over a river separating two States is not an interference with interstate commerce, the establishment of one over a boundary between the States and a foreign country is not an interference with foreign commerce, and it follows that the establishment of such ferries is a matter within the jurisdiction of the States respectively and not of the Congress of the United States. We concluded that the decision in *Conway v. Taylor* is not overruled, either expressly or by implication and that it is decisive of the question in support of which it was cited."

The Supreme Court of Missouri in 1891, in the case of *Carroll v. Campbell*, 108 Mo. 550, had before it the question of the power of the State of Missouri to establish and regulate a ferry between that State and the State of Illinois. The Court discusses in its opinion the case of *Gloucester Ferry Co. v. Pennsylvania*, and having distiuguished it from the Conway case, bases its conclusion upon the latter, holding that the ruling of this Court in that case had not been overruled or modified in any manner and was decisive of the question presented.

The cases of *Moran v. New Orleans*, 112 U. S. 69, and *Harman v. Chicago*, 147 U. S. 396, presented no question of the power of a State to license interstate ferries. There is a manifest distinction between operating a ferry with fixed landing places and engaging in the coasting trade under the laws of the United States.

In the case of the *Wiggins Ferry Co. v. East St. Louis*, this Court expressly reaffirmed the doctrine announced in the Conway case but in addition thereto, placed its decision also upon the apparently narrower ground that inasmuch as the Company had its *situs* in Illinois it was competent for that State to compel it to procure a license to operate an interstate ferry. In determining the character of that license the Court said:

> "The license fee exacted is, in effect, laid upon the business of keeping a ferry, for it is not laid upon all boats owned by the ferry keeper, but only on such as ply between the two banks of the river, and is graduated by the number of boats used by him." (107 U. S. page 376.)

There is no doubt whatever therefore that the license fee imposed in that case was for the privilege of engaging in commerce between the States. If this is so the *situs* of the licensee would seem to be of no consequence. The license fee not being a tax

upon property, but an exaction for the privilege of doing a certain business, and that business being the transportation of goods and persons from one State to another, the residence of the ferryman was clearly not an element to be considered. If the imposition had been a tax on property, as it was in the case of *Transportation Co. v. Wheeling*, 99 U. S. 273, the residence or *situs* of the ferryman would have been a governing factor in the case, but, as we have seen, it was not such a tax. It seems to follow that the *situs* of a company operating an interstate ferry has no bearing upon the question whether or not it can be compelled to obtain a license to operate the same. A company of Missouri has no better or other rights in that respect than one in Illinois, because the license fee is an exaction for the privilege, and the privilege is the same in both cases.

In the case of *Transportation Co. vs. Wheeling*, 99 U. S. 273, cited in the Wiggins Ferry case, the imposition was a tax proper, being based upon valuation, and there was no reasonable ground upon which to place a contention that the State of the *situs* of the company had no power to levy and collect the tax. In the Wiggins Ferry case, however, the exaction was for the privilege of engaging in interstate commerce, and was not a tax upon property. It seems to follow from these considerations that the meaning of this Court, in the Wiggins Ferry case, as in the Conway case, was precisely expressed, when it said:

> "The exaction of a license fee is an ordinary exercise of the police power by a municipal corporation. When, therefore, a State expressly grants to an incorporated city, as in this case (to a county as in the case at bar), the power "to license, tax and regulate ferries" the latter may impose a license tax on the keepers of ferries, although their boats ply between landings in two different States, and the act by which this exaction is authorized will not be held to be a regulation of commerce."

If this exaction is a prohibited regulation of interstate commerce, it is just as far prohibited if the ferryman lives in Illinois, as it would be if he lived in Missouri. A State has no power to regulate or interfere with interstate commerce, and it can no more regulate or interfere with its own citizens engaged in that business, than it can regulate and interfere with citizens of other States, who come into its borders and transact the same business. They all stand on the same footing and have the same rights and privileges. If a State may exact a license fee from its own citizens for the mere privilege of operating an interstate ferry, without interfering with interstate commerce, it may do so from citizens of other States who subject themselves to its jurisdiction and bring themselves within the provisions of its statutes. Any law which regulates or interferes with interstate commerce when applied to citizens of another State who come within its operation, also regulates or interferes with commerce when it is engaged in by its own citizens. The solution of the matter is found in the decisions of this Court made in the Conway and Wiggins Ferry Company cases. The exaction of a reasonable license fee from a ferryman engaged in transporting persons and property from one State to another is not a regulation of commerce, within the inhibition of the constitution.

These two cases and those cited therein are the only cases decided by this Court which pass directly upon the very question raised on this record, and they seem to be conclusive.

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Attorney for Plaintiff in Error.

In the Circuit Court of the United States, Southern District of Illinois.

COUNTY OF ST. CLAIR, Plaintiff,
vs.
INTERSTATE CAR TRANSFER CO., Def't. } Debt.

This matter arises upon a general demurrer of the defendant company to the declaration. The demurrer is based upon the contention that the business alleged by the plaintiff to be conducted by the defendant is inter-state commerce, and that the State of Illinois has no power to regulate or control the same as is here sought to be done.

Counsel for the plaintiff admits that the business conducted by the defendant is inter-state commerce, but insists that the imposition of the license tax under the Illinois statute, which is invoked for that purpose, is not an interference within the meaning of the Constitution of the United States, which re-reserves to Congress the power to regulate inter-state commerce.

Plaintiff's case is admitted to rest entirely upon the decision of the U. S. Supreme Court in the case of the *Wiggins Ferry Company v. East St. Louis*, 107 U. S. 365.

The gist of the Wiggins Ferry case is contained in the following paragraph:

"The next question presented by the assignments of error relates to the power of the State to impose a license fee either directly or through one of its municipal corporations upon the keepers of ferries living in the State, for boats owned by them and used in ferrying passengers and goods from a landing in the State across a navigable river to a landing in another State. It is insisted by the plaintiff in error that such an exaction is forbidden by the Constitution of the United States, 1, because it is a regulation of commerce between the States, and, therefore, within the exclusive power of Congress; and, 2, because it is a duty of tonnage, which the States are forbidden by the Constitution to lay without the consent of Congress.

In our opinion neither of these contentions is well founded. The levying of a tax upon vessels or other watercraft or the exaction of a license fee by the State within which the property subject to the exaction has its *situs*, is not a regulation of the commerce within the meaning of the Constitution of the United States. *Gibbons v. Ogden*, 9 Wheat. 1; *Passenger Cases*, 7 How. 283; *Morgan v. Parham*, 16 Wall 471. In *Gibbons v. Ogden*, it was settled that the clause of the Constitution conferring on Congress the power to tax, and the clause regulating and restraining taxation, are separate and distinct from the clause granting the power to Congress to regulate commerce. In all of the cases just cited the right of a State to tax a ship owned by one of her citizens and having its *situs* within the State, although used in foreign commerce or in commerce between the States, was distinctly recognized. Thus, in Passenger Cases, it was said by Mr. Justice McLean: "A State cannot regulate foreign commerce, but it may do many things which more or less affect it. It may tax a ship or other vessel used in commerce the same as other property owned by its citizens. A State may tax the stages in which the mail is transported, but this does not regulate the conveyance of the mail any more than taxing a ship regulates commerce, and yet, in both instances, the tax on the property in some degree affects its use."

As to the second objection urged in the Wiggins Ferry case: namely, because "it is a duty of tonnage, which the States are forbidden by the Constitution to lay without the consent of Congress," the Court cites numerous authorities in opposition to this view, and say:

"These authorities show that the enrollment and licensing of a vessel under the laws of the United States does not of itself exclude the right of a State to exact a license from her own citizens on account of their ownership and use of such property having its *situs* within the State."

It therefore appears that the Wiggins Ferry case, so strongly relied upon by counsel for the plaintiff, rests upon the citizenship of the owner of the property and the *situs* of the property itself for purposes of taxation, both of which were held

to be within the State of Illinois and within the City of East St. Louis.

In the case at bar there is no averment of citizenship in the County of St. Clair and the *situs* of the property of the defendant for the purposes of taxation rests upon the averment that the defendant, "in order to keep and use its said ferry, constructed and caused to be built a permanent landing place with certain cradles and roadways thereto, within the limits of said county and subject to taxation in said county and State, by means whereof, as well as by means of certain steamboats and barges then and from thence hitherto used for that purpose by the defendant, it, the said defendant, was enabled to, and did continuously since the day first aforesaid, ferry for profit and hire property, to-wit: certain railroad cars loaded with various kinds of personal property and freight from said county across the Mississippi River aforesaid and from the west bank of said river to said county."

I am of opinion that this averment does not bring the case within the ruling of the Supreme Court in the Wiggins Ferry case and that it is clearly distinguishable from the latter case. The defendant is not a citizen or resident of the county of St. Clair or the State of Illinois. Its entire business consists in ferrying freight across the Mississippi River from the city of St. Louis, on the Missouri shore, where its citizenship and residence are and where the *situs* of its property is, to the city of East St. Louis, in St. Clair county, Illinois. Its only property in Illinois consists of the landing place described in the declaration. The case at bar is controlled by the decision in the cases of the *Gloucester Ferry Co. v. Pennsylvania*, 114 U. S. 196; *Moran v. New Orleans*, 112 U. S. 69; and *Covington and Cincinnati Bridge Co. v. Kentucky*, 154 U. S. 204. In the Gloucester case the Court say: "that the license is a charge explicitly made as a price of the privilege of navigating the Mississippi River between New Orleans and the Gulf" and that "the State thus seeks to burden with an exaction fixed at its own pleasure the very right to which the plaintiff in error is entitled under, and which he derives from, the Constitution and laws of the United States." In the

Covington Bridge Case the Court makes a distinction between the Wiggins Ferry Case and the Moran Case, which is equally applicable here.

I am of opinion that the statute, by virtue of which plaintiff seeks to collect this license tax, is a regulation of inter-state commerce and as such is repugnant to the Constitution of the United States. The demurrer to the declaration is sustained.

CHAPTER 55 REVISED STATUTES OF ILLINOIS.

An Act to revise the law in relation to ferries. In force July 1, 1874:

1—That no person shall establish, keep or use any ferry for the conveyance or passage of persons or property, for profit or hire, unless he shall be licensed as directed by this act, under the penalty of $5 for each day the same is maintained, and $3 for each person and each article of property so conveyed, to be forfeited to the county in which the ferry is situated. This shall not apply to ferries heretofore established by law.

2—Any person may petition the county board for license to keep a ferry, and if such board shall deem such ferry necessary, it shall order the county clerk to issue a license to such person, upon his paying the fee therefor, to be fixed by the board, and giving bonds as provided by this act: *Provided*, that no person shall be licensed to keep a ferry within one mile of any established ferry, so long as such established ferry is competent to do the business, and its owner complies with the provisions of this act, unless the county board shall deem it necessary to establish another ferry for the public good.

3—Where the ferry is to be established between two counties, the petition shall be addressed to the county boards of both counties, and the concurrence of both of said boards shall be necessary to the granting of the license, fixing the tolls and prescribing the regulations of the ferry; but a separate license shall be issued by each county, and a license fee paid to each county. And all the provisions of this act shall apply to each of the counties, so far as the same may be applicable.

4—No license shall be granted to establish a ferry unless the petitioner shall give notice of his intended application by publication in some newspaper published in the county for at least four weeks successively next preceding the session of the county board at which the application shall be made, or if no newspaper is published in such county, by posting

notices in four public places therein, at least four weeks previous to such session. When the application is to several county boards, the notice herein provided shall be given in each county.

5—No such license shall be granted to any person other than the owner of the land adjoining to or embracing the water over which the ferry is to be established, unless such owner shall neglect to apply for such license, after notice by the applicant at least four weeks before the sitting of the county board, of his intention to make such application: *Provided*, that when any owner is a non-resident, or cannot be found, such notice shall be given to the party in possession of the land, if the same be occupied: and if no person be in possession, no such notice need be given: And *provided*, that license may be granted without regard to the ownership of the land, when the ferry has its termini upon a public highway.

6—When several such owners apply, the county board may grant the license to any one or more of them as it shall deem best.

7—Before the delivery of any license, the person to whom the same is granted shall give bond, payable to the People of the State of Illinois, with sufficient sureties to be approved by the county clerk, in such sum as the county board shall order, conditioned for the faithful discharge of his duties as ferrryman according to law: which bond shall be filed in the office of the county clerk.

8—The term for which a ferry license shall continue shall be fixed by the county board at the time of granting the license, not exceeding ten years, but the same may be renewed from time to time upon petition, without the notice herein before required, upon giving such bond and paying such license fee as may be required by the county board.

9—The license fee to be fixed by the county board in any case, shall be such sum as the said board shall think proper, not

less than $5, nor exceeding $300, but such license fee shall not be in lieu of taxes upon the property, or franchise of such ferry, but the same shall be subject to be assessed and taxed as other property and franchises.

10—The county board shall fix the rate of ferriage at each ferry, and may at any time alter the same, having regard for the breadth and situation of the stream or other water course, and the publicity of the ferry, and may prescribe regulations for the management of such ferry.

11—Every keeper of a ferry who shall at any time take or demand more than the toll allowed as aforesaid, shall, for each offense, forfeit and pay to the party aggrieved the sum of $3, and such amount as he shall have illegally taken.

12—Every keeper of a ferry shall keep a list of the legal rates of ferriage, printed, or written in a legible hand, constantly posted up in some public place at the ferry or ferry house, where the same can be easily seen and read by passengers.

13—If any keeper of a ferry fails to comply with the provisions of the preceding section, he shall, for every day such list is not posted up, forfeit not less than $10 to the county.

14—Every keeper of a ferry shall provide proper wharves, causeways or other conveniences and safeguards for the embarking and landing of passengers, teams, horses, cattle and other property in safety, and without unnecessary delay.

15—He shall keep the ferry at all times in good repair, and shall faithfully attend thereto, with such and so many safe boats, and so many competent men, and proper implements as shall be necessary to operate such ferrry for the proper accommodation of the public.

16—If any keeper of a ferry shall fail to perform any of his duties under the two preceding sections, he shall forfeit to the county $10 for each day during the continuance of such failure. If such failure be continued for the space of three weeks, or, if the ferry shall be abandoned, disused

or unfrequented for the space of six weeks, the county board may, on complaint, notify the proprietor thereof to show cause why his license should not be revoked, and the county board may, if the cause is proved to their satisfaction, revoke such license.

17—Every keeper of a ferry shall afford safe and speedy passage to all persons and their teams and property, from daylight in the morning until dark in the evening of each day, unless delay is necessary for repairs, and during such further time as may be required by the county board, and shall at any hour of the night, when required, give passage to any person or property on payment or tender of double the rate of ferriage allowed during the day. No ferryman shall be required to give such passage when it manifestly appears hazardous so to do, by reason of any flood, storm or ice.

18—All persons shall be received into such ferryboats or other vessels, as aforesaid, and conveyed across the water course over which the same shall be established, according to their arrival or first coming to the said ferry: *Provided*, that all public officers, or such as go on public or urgent occasion, as post riders, couriers, physicians, surgeons and midwives, shall in all cases, be the first carried over, where all cannot go at the same time.

19—If a keeper of a ferry shall fail to perform any of his duties under the two preceding sections, he shall, for each offense forfeit to the person aggrieved the sum of $3, and shall be liable for all damages occasioned thereby.

20—All ferries heretofore established and confirmed over the Ohio, to the proprietors of land on the western shore of said river, as well as all other ferries which have, at any time, been established over any of the lakes, rivers, creeks or other water courses within the limits or upon the borders of this state, and where the same has been kept in operation or repair from time to time according to law, and have not at any time since their establishment, been

discontinued or abandoned, shall be and they are hereby declared to be established ferries within the meaning of this act, and entitled to the benefits of the same.

21—Whoever, not being licensed to maintain a ferry, or authorized by law so to do, shall run any boat or other craft for the purpose of conveying passengers across any river or other water course, within three miles of any ferry which now is or hereafter shall be established pursuant to this act, except as hereinafter allowed, shall forfeit such boat or craft to the owners of such ferry, and shall also forfeit to the owner of such ferry $15 for each person who may be thus unlawfully conveyed across such water course: *Provided*, that nothing herein contained shall be construed to prevent any person from crossing any stream or water course over which any such ferry shall be established as aforesaid, in his own boat or other craft on his own business or to take in and cross his neighbors where the same is done without fee and not with intention to injure any ferryman near, or to cross any person or property without fee, when the ferry is not in actual operation or in sufficient repair to afford a safe and speedy passage to persons and property.

22—The penalties herein provided for may be recovered in an action of debt before any justice of the peace in the county where the offense is committed.

23—When it shall be necessary for the establishment or use of any ferry, to take or damage any private property, for a landing, ferry house, or approach to any ferry, proceedings may be had for that purpose under any act that may then be in force for the exercise of the right of eminent domain, subject to all restrictions that may be prescribed by law.

NOTE.

The first legislature which convened after the State of Illinois was admitted into the Union in 1818, passed an act giving county commissioners power to establish and regulate ferries. —Laws 1819, p. 28.

Amendatory acts were passed February 9, 1821. (Laws of 1821, p. 117), and January 25, 1825. (Laws 1825, p. 63.)

In 1827 the whole subject of Ferries, Toll Bridges and Turnpike Roads was considered in one act and all former legislation expressly repealed. The supervision and control of ferries in the limits, or on the borders of the State was confided to the boards of county commissioners and licenses provided for. Revised Laws, 1827, p. 220.

On February 12, 1827, a law was passed giving county commissioners in counties bordering on the Ohio River certain power and authority with respect to ferries on the Illinois shore of that stream.

Revised Laws 1827, p. 227.

In the Revision of 1833 the two last named acts are reprinted without change. Revised Law, 1833, p. 302.

In the Revision of 1845, the provisions of the Revised Statutes of 1827 were re-enacted, and Ferries, Toll Bridges and Turnpike Roads were treated of in one act.

Revised Statutes 1845, p. 251.

The Revised Statutes of 1874 divide the provisions respecting Ferries, Toll Bridges and Toll Roads and place them in three separate chapters, namely—55, 137 and 138. The chapter above printed, does little more than separate the provisions of prior acts relating to ferries from those relating to Toll Roads and Toll Bridges. Some of the sections of the prior acts are re-written, but no very material change was made. Sections 3, 6, 8, 9, and 23 are new.